

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

MATTHEW GIBSON,

Plaintiff,

v.

**CIVIL ACTION NO.: 5:21-cv-00181
HONORABLE FRANK W. VOLK**

**LOUISE E. GOLDSTON, individually,
COUNTY COMMISSION OF RALEIGH
COUNTY, a political subdivision,
JEFF MCPEAKE, individually,
BRIAN WHITE, individually,
BOBBY STUMP, individually,
KYLE LUSK, individually,**

Defendants.

**DEFENDANTS' RALEIGH COUNTY COMMISSION, JEFF MCPEAKE, BRIAN
WHITE AND BOBBY STUMP'S OMNIBUS MOTION IN LIMINE**

NOW COMES Defendants, Raleigh County Commission, Jeff McPeake, Brian White, and Bobby Stump, by counsel, J. Victor Flanagan, Kevin J. Robinson, and the law firm of Pullin, Fowler, Flanagan, Brown & Poe, PLLC, and files the following *Motion in Limine* as follows:

1. These Defendants move this Court, *in limine*, for an Order prohibiting the other party or their Counsel, in opening statement, questioning witnesses, closing argument, or at any point throughout trial, from mentioning or suggesting that the Defendants have liability insurance or any other type of insurance which would cover the damages sought by the other parties in this matter. *Reed v. Wimmer*, 465 S.E.2d 199 (W.Va. 1995); *State ex rel State Farm Fire v. Madden*, 451 S.E.2d 721 (W.Va. 1994); *Hewett v. Frye*, 401 S.E.2d 222 (W.Va. 1990); *Riggle v. Allied Chemical Corp.*, 378 S.E.2d 282 (W.Va. 1989).

2. These Defendants move this Court, *in limine*, for an Order sequestering the individuals named as witnesses in the above-captioned case during the course of the trial.

3. These Defendants move the Court, *in limine*, to enter an Order prohibiting the Plaintiff and/or Plaintiff's counsel, in opening statement, questioning witnesses, closing argument or at any point throughout the trial, from making any arguments relating to the time value of money or referring in any way to specific figures that would be appropriate for non-economic damages in this case, as well as from mentioning specific figures for alleged economic losses unless and until such damages are proven with reasonable certainty as required under West Virginia law. See *Jordan v. Bero*, 210 S.E.2d 618 (W.VA. 1974). These Defendants further request that this Court also preclude Plaintiff's counsel from engaging in analogies, such as the "race-horse" analogy, or other means of suggesting the value of Plaintiff's damages.

4. These Defendants move this Court, *in limine*, to enter an Order prohibiting the Plaintiff and/or Plaintiff's counsel, in opening statement, questioning witnesses, closing argument or at any point throughout the trial from suggesting to the jury a dollar figure for the intangible elements of pain and suffering by either a direct communication, per diem argument, analogy, simile, hypothetical or any and all other means of suggesting a dollar figure for such intangibles. *Roberts v. Stevens Clinic Hospital, Inc.*, 345 S.E.2d 791 (W.Va. 1986).

WHEREFORE, these Defendants request that the Court grant Defendants' Omnibus *Motion in limine*.

**COUNTY COMMISSION OF RALEIGH
COUNTY, JEFF McPEAKE, BRIAN
WHITE AND BOBBY STUMP**

By Counsel,

/s/ Kevin J. Robinson

J. Victor Flanagan, WV State Bar No. 5254

Kevin J. Robinson, WV State Bar No. 10181

PULLIN, FOWLER, FLANAGAN, BROWN & POE, PLLC

252 George Street

Beckley, WV 25801

Telephone: (304) 254-9300

Facsimile: (304) 255-5519

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

MATTHEW GIBSON,

Plaintiff,

v.

**CIVIL ACTION NO.: 5:21-cv-00181
HONORABLE FRANK W. VOLK**

**LOUISE E. GOLDSTON, individually,
COUNTY COMMISSION OF RALEIGH
COUNTY, a political subdivision,
JEFF MCPEAKE, individually,
BRIAN WHITE, individually,
BOBBY STUMP, individually,
KYLE LUSK, individually,**

Defendants.

CERTIFICATE OF SERVICE

The undersigned, counsel of record for Defendants, does hereby certify on this 6th day of June, 2022, that a true copy of the foregoing "**DEFENDANTS' RALEIGH COUNTY COMMISSION, JEFF MCPEAKE, BRIAN WHITE AND BOBBY STUMP'S OMNIBUS MOTION IN LIMINE**" was served upon opposing counsel through the Court's CM/ECF filing System as follows:

John H. Bryan, Esquire
Law Office of John H. Bryan
611 Main St.
P.O. Box 366
Union, WV 24983
jhb@johnbryanlaw.com
Counsel for Plaintiff

Jennifer E. Tully, Esquire
Adam K. Strider, Esquire
Bailey & Wyant, PLLC
500 Virginia Street, East, Suite 600
P. O. Box 3710
Charleston, WV 25337-3710
jtully@baileywvant.com
astrider@baileywvant.com
Counsel for Defendant Louise E. Goldston

/s/ Kevin J. Robinson

J. Victor Flanagan, WV State Bar No. 5254
Kevin J. Robinson, WV State Bar No. 10181